

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

LARRY DAVENPORT,)	
)	
Plaintiff,)	
)	CASE NO.: 2:20-cv-00009
v.)	
)	
AMMAR ALHAJ, MELISSA J. HUISA,)	
NAVAJO EXPRESS INC, MATTHEW N.)	
SCHAFER, and ACUITY, a MUTUAL)	
INSURANCE COMPANY,)	
)	
Defendants.)	

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES AND CLERK OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA.

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1332, 1441, and 1446, 28:1441; Defendant, NAVAJO EXPRESS, INC. (“NAVAJO”), by counsel, hereby files this Notice of Removal to remove the above-entitled action to this Court based upon the following supporting grounds. Removing Party NAVAJO, appearing solely for the purpose of this removal, and for no other purpose, and preserving all other defenses available to them, states as follows:

VENUE

1. Removal to the Northern District of Indiana, Hammond Division, is appropriate pursuant to 28 U.S.C. § 1441(a), because the Northern District of Indiana, Hammond Division, embraces the County of Lake, where the action was pending prior to the filing of this Notice of Removal.

REMOVAL IS TIMELY

2. On or about December 13, 2019, removing party NAVAJO was served by certified mail with a Summons and Complaint in the above-entitled action via its registered agent, Pamela Warner in Attica, Indiana. The above-entitled action was commenced against removing party NAVAJO in the Lake County Superior Court, of the State of Indiana, Cause No. 45D05-1912-CT-001257 and is now pending therein. Therefore, removal is timely under 28 U.S.C. § 1446 (b)(1)

STATE COURT PROCEEDINGS

3. On December 5, 2019, Plaintiff Larry A. Davenport (hereinafter “Plaintiff”) filed his Complaint in the above-entitled action against Defendants in the Lake County Superior Court in the State of Indiana, Cause No. 45D05-1912-CT-001257 and is now pending therein.

4. On January 2, 2020, Co-Defendant counsel, Christopher R. Erickson, filed his appearance on behalf of Co-Defendant Ammar Alhaj.

5. On January 3, 2020, Co-Defendant counsel, Patrick J. Cullinan, filed his Appearance and Answer on behalf of Co-Defendant Acuity, a Mutual Insurance Company (“Acuity”).

6. On January 3, 2020, Co-Defendant counsel, Michael M. Oberman, filed his Appearance and Answer on behalf of Co-Defendant Matthew Schafer.

7. On January 6, 2020, the Lake County Superior Court issued an Order scheduling a Status Hearing.

8. To date, based on information and belief, no service has been attained on Melissa J. Huisa.

9. Counsel for Co-Defendants, Ammar Alhaj, has been notified of this Removal and does not object to the removal of the action under 1446(b)(2)(A).

10. Counsel for Co-Defendant, Acuity, has been notified of this Removal and does not object to the removal of the action under 1446(b)(2)(A).

11. Counsel for Co-Defendant, Matthew Schafer, has been notified of this Removal and does not object to the removal of the action under 1446(b)(2)(A).

12. Counsel for Plaintiff, Davenport, has been notified of this Removal and does not object to the removal of the action under 1446(b)(2)(A).

13. Defendant NAVAJO asserts that there are no state court motions that remain pending at the time of this Notice of Removal.

DIVERSITY JURISDICTION EXISTS

14. This is a civil action that falls within the Court's original jurisdiction under 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship under 28 U.S.C. §§ 1441 and 1446.

15. Plaintiff Larry Davenport is a citizen of the State of Michigan.

16. Defendant Ammar Alhaj is a citizen of the State of Illinois.

17. Defendant Melissa J. Huisa is a citizen of the State of Utah.

18. NAVAJO EXPRESS INC is a Colorado corporation with its principal place of business in Colorado.

19. Defendant Matthew N. Schafer is a citizen of the State of Indiana.

20. Acuity, a Mutual Insurance Company is a Wisconsin corporation with its principal place of business in Wisconsin.

21. Because NAVAJO EXPRESS INC is not incorporated in Indiana or have its principal place of business in Indiana, it is not a citizen of the State of Indiana for purposes of diversity jurisdiction.

22. There is complete diversity of citizenship between the parties named in this case.

23. Plaintiff's Complaint for Damages does not demand a specific sum of monetary damages. The State of Indiana does not permit a demand for a specific sum or permit recovery of damages in excess of the amount demanded. Therefore, this Notice of Removal states that the monetary value of the amount in controversy exceeds \$75,000, exclusive of interest and costs, based upon the following:

- a. On December 5, 2019, Plaintiff's counsel reported that Mr. Davenport sustained permanent injuries as an alleged result of the accident forming the basis of their Complaint.
- b. Plaintiff's counsel has communicated his belief that the potential recovery of this matter is in excess of \$75,000 exclusive of interest and costs.

24. Based upon the injuries alleged and damages claimed by Plaintiff, he seeks recovery in excess of \$75,000 exclusive of interest and costs, the value to Plaintiff of the relief sought in the Complaint exceeds \$75,000 exclusive of interest and costs, and/or the amount in controversy exceeds \$75,000 exclusive of interest and costs.

25. Therefore, this state court action is properly removed to this Court in accordance with 28 U.S.C. §§ 1441 and 1446 because: (1) this action is a civil action pending within the jurisdiction of the United States District Court for the Northern District of Indiana, Hammond Division; (2) this action is between citizens of different States; (3) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

STATUTORY REQUIREMENTS

26. Pursuant to 28 U.S.C. § 1446(a), a copy of the entire state court file is attached as an Exhibit and includes the State Court Record as of the date of this Notice of Removal, including the following: Plaintiff's Complaint, Appearance, Summons to Defendants, Return of Service, Appearances for Co-Defendants Ammar Alhaj, Acuity, Matthew Schafer, Answers for Acuity and Matthew Shafer, and a Court Order Setting Status Hearing.

27. A copy of this Notice of Removal has been filed in the Lake County Superior Court and all parties have been served with both this Notice of Removal and the Notice of Filing Notice of Removal.

WHEREFORE, Defendant, NAVAJO EXPRESS INC, by counsel, respectfully requests that the above-entitled action be removed from the Lake County Superior Court to the United States District Court for the Northern District of Indiana, Hammond Division.

LEWIS WAGNER, LLP

By: /s/Robert R. Foos, Jr.
ROBERT R. FOOS, JR., #20885-45
***Counsel for Defendant Navajo Express
Inc.***

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020, a copy of the foregoing Notice of Removal was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

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